IN THE

Supreme Court of the United States

October Term, 1940

No. .....

P. M. JACKSON, Trustee in Bankruptcy for the Estate of Leonard J. Woodruff, a Bankrupt,

Petitioner,

vs.

E. A. LYNCH, Receiver in Bankruptcy of the Estate of Leonard J. Woodruff, Alleged Bankrupt,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

Opinions Below.

The opinion of the District Court for the Southern District of California is reported in 30 Federal Supplements 17.

The opinion by the United States Circuit Court of Appeals for the Ninth Circuit was filed May 10th, 1940, and is reported in 111 Federal Reporter 2nd Series 1003.

Jurisdiction.

The judgment of the Circuit Court of Appeals was filed May 10th, 1940. A petition for rehearing was filed and denied on June 21st, 1940. This petition for Writ of Certiorari is filed within three months after the filing of said opinion and the denial of the petition for rehearing.

The jurisdiction of this Court is invoked under section 240 of the Judicial Code, 28 U. S. C. A. 347.

Statement of the Case.

The essential facts of the case at bar are stated in the accompanying petition for Writ of Certiorari and in the interest of brevity are not repeated herein.

Specification of Errors.

The Circuit Court of Appeals erred in each of the following particulars:

1. In holding that the District Court in California had jurisdiction to entertain involuntary proceedings and appoint a receiver, and fix his compensation, fix his attorney's compensation and order their payment out of property already in *custodia legis* of the District Court in Oklahoma, with knowledge of the prior order by the District Court of Oklahoma adjudging the same person a bankrupt.

2. The opinion fails to give full faith and credit to a final judgment of the District Court of Oklahoma.

3. The opinion is in conflict with and violates the spirit and letter of the United States Supreme Court General Order No. 6.

4. The opinion is in conflict with and violates the spirit and letter of United States Supreme Court General Order No. 51.

5. The opinion is erroneous in holding that the District Court of California had primary jurisdiction after the entry of the order of adjudication by a court of concurrent jurisdiction in Oklahoma.

6. The opinion is erroneous in applying to the instant facts the principles in the case of *Jones v. Springer*, 226 U. S. 148, 33 S. Ct. 64, 57 L. Ed. 161.

7. The opinion is erroneous in assuming that the action of the District Court of California (in conflict with the District Court of Oklahoma) was proper by reason of a lack of a custodian of the bankrupt's property, despite the fact that the Bankruptcy Act provides ample powers by ancillary proceedings in aid of the court of original jurisdiction to preserve the property.

8. The opinion is erroneous in holding that the trustee's application to the District Court of California for an order to turn over the bankrupt's property in the possession of the receiver conferred and was the exercise of ancillary jurisdiction.

ARGUMENT AND AUTHORITIES IN SUPPORT OF PETITION.

Final Judgment of Oklahoma District Court Disregarded.

The Oklahoma District Court first acquired and exercised its jurisdiction of the *res* and of the parties and proceeded to final judgment adjudging Leonard Woodruff a bankrupt.

Robertson v. Howard, 229 U. S. 254, 33 S. Ct. 854, 57 L. Ed. 1174;

Gilbert's Collier on Bankruptcy, 4th Edition 417.

All property of the bankrupt vested in petitioner herein as of the date of adjudication and was in *custodia legis* of the Oklahoma court after that date.

Mueller v. Nugent, 184 U. S. 1; 22 Sup. Ct. 269, 46 L. Ed. 405;

Acme Harvester Co. v. Beekman Lumber Co., 222 U. S. 300, 32 Sup. Ct. 96, 56 L. Ed. 208.

The California District Court, in disregard of the final judgment and constructive custody of the Oklahoma Court, entertained an involuntary petition having for its object the adjudging of the same person to be a bankrupt and the appointment of a trustee over the estate already in legal custody of the Oklahoma Court. The California Court proceeded to appoint a receiver, took charge of the bankrupt's assets, and holds them in disregard of the trustee's and the Oklahoma court's rights.

The Circuit Court for the Ninth Circuit has held that this is proper as the California court had concurrent jurisdiction. We believe that concurrent jurisdiction was ex-

hausted when a court of concurrent jurisdiction (the Oklahoma Court) first proceeded to judgment, and that this first judgment should have been recognized by the California court.

See,

In Re Continental Coal Corp., 238 Fed. 113, 116 (Sixth Circuit Court of Appeals).

The opinion complained of becomes a dangerous precedent for future proceedings in bankruptcy and permits several District Courts in different states to administer the same property in conflict with one another.

See,

Farmers Loan and Trust Co. v. Lake St. Rd. Co., ***supra.***

The Opinion Violates General Order No. 6.

Attention is called to General Order No. 6 providing that, upon application being made, the Court first acquiring jurisdiction shall

> "determine the court in which the cases can proceed with the greatest convenience to parties in interest, and the proceedings upon the other petitions *shall be stayed by the courts in which such petitions have been filed until such determination is made.*" (Emphasis supplied.)

We think the spirit as well as the interpretation of this order means that no further steps should be taken to settle receiver's accounts or perform other duties by any court until the conflict between the respective courts has been determined, and then, no provision being made for further

orders or proceedings in any other court, the order is mandatory that the other courts shall order the cases before them transferred to the court first acquiring jurisdiction.

Under the opinion of the Ninth Circuit Court of Appeals this General Order is made meaningless by allowing other courts to proceed to enter orders for fixing fees, ordering the fees paid, ordering sales of assets, etc., and there is no end to where the confusion and such proceedings may lead. On the other hand a reasonable interpretation of the General Order would mean that all other courts must immediately transfer the file and proceedings to the court first acquiring jurisdiction, so that said General Order and its equitable purposes and objectives can be accomplished.

May we inquire, what benefit is the injunctive provision "shall be stayed" if, after the order is made under General Order No. 6, the "stay" is dissolved and the court thus enjoined is allowed to enter further orders? This is the effect resulting from the opinion of the Ninth Circuit Court of Appeals.

The Opinion Destroys the Requirements of General Order No. 51.

The next to the last paragraph of the decision of the Circuit Court of Appeals is to the effect that the application by Trustee Jackson to the District Court of California for surrender of the property, retroactively converted the proceedings in California into ancillary jurisdiction.

The Supreme Court of the United States, in *Gross v. Irving Trust Co.*, 289 U. S., 342, 345, 53 S. Ct. 605, 77 L. Ed. 1243 has stated that this proceeding should be fol-

lowed under a judicial courtesy owed by one court to another. The Court stated:

> "Nevertheless, due regard for comity—which means, in this connection, no more than judicial courtesy between the courts undertaking to deal with the same matter—would suggest that ordinarily the trustee in bankruptcy might well be instructed by the bankruptcy court, before taking final action, to request the state court to recognize the exclusive jurisdiction of the former and set aside any orders already made conflicting therewith, as was done with good results in the case of *In re* Diamond's Estate, *supra*, pp. 72, 75. In the present case, however, such a course would probably have been futile, in view of the fixed attitude of the state courts on the subject."

The Circuit Court of Appeals for the Ninth Circuit, in *Moore v. Scott*, 55 Fed. (2d), pages 863, 864, has laid down the rule:

> "Nor can the bankruptcy court itself surrender this exclusive jurisdiction: 'Indeed, a court of bankruptcy itself is powerless to surrender its control of the administration of the estate.' Isaacs v. Hobbs Tie & T. Co., 282 U. S. 734, 739, 51 S. Ct. 270, 272, 75 L. Ed. 645."

If the court of primary jurisdiction could not waive or surrender its jurisdiction, it certainly would not, by practicing the judicial courtesy suggested by the Supreme Court, create an ancillary proceeding in California and confer upon the California court the right to administer the bankrupt's assets. Furthermore, the Supreme Court, by its General Order No. 51, in mandatory language provides:

> "No ancillary receiver shall be appointed in any district court of the United States in any bankruptcy

> proceeding pending in any other district of the United States except (1) upon the application of the primary receiver, or (2) upon the application of any party in interest with the consent of the primary receiver, or by leave of a judge of the court of original jurisdiction . . . "

The proceedings filed in California were not claimed to be ancillary, nor did the lower court consider them ancillary proceedings, nor has anyone contended that General Order No. 51 has been met or complied with, in that there was no consent of the primary receiver or trustee, nor any leave of a judge of the court of original jurisdiction.

In *United States Code Annotated*, 1939 Supplement, Title 11, Sections 1 to 31, there is a commentary on the Chandler Bill by George E. Q. Johnson, former United States District judge and author of *Johnson's Bankruptcy Reorganizations*. Quoting from page 8, the author states the rule contended for by appellant:

> "In ancillary proceedings, however, the judge may appoint one or more ancillary receivers, and to prevent unseemly controversies between primary and ancillary receivers, and between the courts of primary and ancillary jurisdiction, the judge must appoint a primary receiver as an ancillary receiver, although he may appoint one or more co-ancillary receivers. This new provision prevents local creditors from controlling the ancillary proceedings antagonistically to the primary receivership and thus a unified administration free from expensive and delaying jurisdictional controveries is made possible."

The worthy object of General Order No. 51 has been destroyed by the opinion here in question, and the Ninth

Circuit Court of Appeals has imposed its rule that if a district court appoints a receiver not in aid of but in conflict with, the court of primary jurisdiction, and the appointment is made in violation of General Order No.51, then if the court of primary jurisdiction in the practice of a judicial courtesy asks for a release of the property, the proceedings automatically become ancillary. Thus General Order No. 51 has been circumvented with judicial sanction and its mandatory requirements become mere empty words.

In view of all that appears herein and for the reasons herein specified it is respectfully prayed that this Honorable Court take jurisdiction in the premises.

CLARENCE W. HULL,
Counsel for Petitioner.

FRANCIS B. COBB
and
THOMAS J. KELLEY,
Of Counsel for Petitioner.

Due service of the within Petition and Brief is hereby acknowledged this.....day of July, A. D. 1940.

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_____

Counsel for Respondent.

7-24-40—65

IN THE

Supreme Court of the United States

October Term, 1940
No. 285.

P. M. JACKSON, Trustee in Bankruptcy for the Estate of Leonard J. Woodruff, a Bankrupt,

Petitioner,

vs.

E. A. LYNCH, Receiver in Bankruptcy of the Estate of Leonard J. Woodruff, Alleged Bankrupt,

Respondent.

ANSWER OF E. A. LYNCH, RECEIVER, TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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IN THE

Supreme Court of the United States

October Term, 1940

No. 285.

P. M. JACKSON, Trustee in Bankruptcy for the Estate of Leonard J. Woodruff, a Bankrupt,

Petitioner,

vs.

E. A. LYNCH, Receiver in Bankruptcy of the Estate of Leonard J. Woodruff, Alleged Bankrupt,

Respondent.

ANSWER OF E. A. LYNCH, RECEIVER, TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

Statement of the Facts.

Leonard J. Woodruff, the bankrupt, is a judgment debtor of M. E. Heiser. Heiser obtained a judgment in the District Court of the Southern District of California for a total of $278,631.71 against said Woodruff in an action entitled *Heiser v. Woodruff*.

Heiser, through his counsel, stipulated to a stay of execution on that judgment, the stay to run to July 6, 1939. Woodruff had been strenuously asserting that substituted service of process on him in California was de-

fective because, he asserted, his residence had been and was at 2446 Inverness avenue, Los Angeles, California, and that he was away from his home only temporarily. The day before the stay of execution expired, to-wit, on July 5, 1939, Woodruff appeared at Muskogee, Oklahoma, and filed his voluntary petition in bankruptcy, alleging that his principal place of business for the greater part of the preceding six months was Carter county, Oklahoma. [Tr. p. 66.] He did not claim residence or domicile in Oklahoma. He filed his schedules in bankruptcy in Oklahoma and DID NOT list his California properties.

The California properties of the bankrupt Woodruff were extensive, consisting principally of a business block located at Los Angeles, on Hollywood boulevard, for which he had paid $225,000.00 [Tr. p. 29], and a set of four antique stores housed on said premises stocked with antiques, oriental goods, Indian goods, medieval arms [Tr. p. 29], which were appraised in this proceeding as of the value of $84,000.00, and a stock of raw sapphires and opals in warehouse value at $30,000.00.

There was no inventory of any kind of said Los Angeles antique stores or of the raw gems.

There was no insurance on either said real or personal property.

No receiver was appointed by the Oklahoma District Court.

No receiver or trustee from Oklahoma appeared in California to preserve, claim, inventory, insure or care for the California properties until P. M. Jackson, Trustee, from Oklahoma, appeared in this proceeding in California with his motion to vacate for the first time on November 17, 1939—more than four month after E. A.

Lynch, Receiver, was appointed receiver by the California District Court, and had done all his work and made all his expenditures of all of which the trustee had full knowledge.

A primary bankruptcy—involuntary—was filed in California.

On application of the petitioning creditor, the District Court of the Southern District of California, made its order appointing E. A. Lynch as receiver for the California properties, the Court being then advised of the bankruptcy proceedings of Woodruff in Oklahoma. [Tr. p. 67.] By the order of his appointment, Lynch was charged with preserving, insuring and operating the properties of the bankrupt, and particularly the stores of the bankrupt at Los Angeles known as Woodruff Antique Stores.

The residence, the domicile and the principal place of business of Woodruff were at Los Angeles, in the Southern District of California. The principal and only place of business of the bankrupt, creditors contend, was the place on Hollywood boulevard, Los Angeles, California, the site of the antique stores, investments in buildings, personal properties, and so forth, of a value in excess of $300,000.00. [Tr. p. 29.]

There being no inventory of any kind of these extensive antique stores, some 25,000 separate articles, some genuine antiques and oil paintings, some reproductions, and some imitations, and no insurance thereon, on application of the California Receiver Lynch the District Court of the Southern District of California ordered counsel for Lynch to proceed to Oklahoma and request an examination of the bankrupt there for the purpose of ascertaining information necessary to properly preserve California assets not scheduled in the Oklahoma bankruptcy proceedings.

Pursuant to that authorization from the District Court one of counsel for Lynch proceeded to Ardmore, Oklahoma, and with the bankrupt in Court requested the privilege of examining the bankrupt concerning matters relative to the proper preservation of the California assets. The Oklahoma District Court refused to permit an examination on the part of the receiver in California. [Tr. pp. 29 to 33, incl.]

After the appointment of E. A. Lynch as Receiver in California and after the qualification of E. A. Lynch as Receiver and after he had gone into possession of the assets in California and then only did the Oklahoma Court qualify a trustee in bankruptcy. No receiver had been appointed at any time by the Oklahoma Court.

The District Court in Oklahoma on October 16, 1939, made its order under General Order 6 determining that, there being two District Courts, each having jurisdiction of the bankrupt, one in the Southern District of California and one in the Eastern District of Oklahoma, holding that the Court in the Eastern District of Oklahoma was

> "this court can proceed with the administration of the bankrupt's estate with the greatest convenience to the parties interested in said estate." [Tr. p. 41.]

And also:

> "The Court further finds that on the 13th day of July, 1939, M. E. Heiser, one of the creditors of bankrupt, filed an involuntary petition in bankruptcy in the United States District Court for the Southern District of California, Central Division, being cause No. 34521-J in Bankruptcy therein and that E. A. Lynch was appointed receiver in said action and is now acting as such receiver; that said proceeding

should be transferred to this Court and this judicial district and should be *consolidated* with this case and that the trustee should take charge of all of the property of the bankrupt including that located in California." [Tr. p. 41.]

Upon transmittal of that order under General Order No. 6, as made by the Oklahoma Court, the District Court for the Southern District of California DID NOT defy the order of the Oklahoma Court, but instead it merely made its order directing the clerk to delay the transmission of its own California records to Oklahoma until after the District Court of the Southern District of California could promptly obtain an account and report of its own receiver, E. A. Lynch, and that order directed the said receiver to file within five days his report and account, as appears from said order which appears in its entirety in the record herein. [Tr. pp. 43-46 incl.] It is the refusal of the California Court to vacate that order that results in the present appeal by the appellant herein.

The memorandum of order by the District Judge for the United States District Court, Southern District of California, justifying his refusal to vacate that order, appears in the record herein [Tr. pp. 51-55 incl.] and reads as follows:

"In the Matter of Leonard J. Woodruff, Alleged Bankrupt.

MEMORANDUM OF ORDER.

Cosgrave, District Judge.

Leonard J. Woodruff was adjudicated a bankrupt on his voluntary petition therefor in the Eastern District of Oklahoma on July 5, 1939, and P. M. Jackson since has been appointed trustee of the bankrupt

estate. On July 13, 1939, an involuntary petition seeking the adjudication of Leonard J. Woodruff as a bankrupt was filed in the Southern District of California. On petition setting up legal necessity therefor, E. A. Lynch was appointed receiver under the involuntary petition by the California court, and authorized to employ counsel. A considerable amount of real, as well as personal property, the latter being an extensive store for the sale and rental of antiques, was located in California, and the receiver was authorized to operate this business.

On October 16, 1939, the court in Oklahoma, acting under General Order in Bankruptcy No. 6, after application therefor and hearing on such application, found the Eastern District of Oklahoma to be the domicile of the bankrupt during the required period, and also found it to be the principal place of business of the bankrupt, and because of these and other entirely sufficient reasons, the court found that it is the court which can proceed with the administration of the bankrupt's estate with the greatest convenience to the parties interested. The court then by its decree adjudged accordingly, and by its order transferred the case pending in the Southern District of California to the Eastern District of Oklahoma, and consolidated it with the case pending in the last named district.

Mr. Lynch, the receiver in California, does not question [42] the effectiveness of the decision of the Oklahoma court, since it was the first to acquire jurisdiction, but he insists that this court must settle his account as receiver before the case is transferred. Immediately after the filing in the office of the Clerk of this court of a certified copy of the decree of the Oklahoma court, Mr. Lynch procured an ex parte

order delaying the execution of the decree of the Oklahoma court until his said account is settled. Mr. Jackson, trustee in the Oklahoma proceedings, now moves this court to set aside its order staying the transfer of the case, and instead to order such transfer forthwith. The question presented, therefore, is whether this court has jurisdiction and duty to settle the account of the California receiver before the case is transferred to the Eastern District of Oklahoma.

The involuntary petition filed in California alleges that the residence, domicile, and principal place of business of the bankrupt is in this district. The Oklahoma court finds that the domicile and principal place of business of the bankrupt is in the Eastern District of Oklahoma.

It is plain that the California court is not without jurisdiction in the premises. The District Court may: 'adjudge persons bankrupt who have had their principal place of business, resided or had their domicile within their (the court's) respective territorial jurisdiction for the preceding six months.' Bankruptcy Act 2, a (1).

In fact, the order of the Oklahoma court presumes this to be the case for that order is based on General Order No. 6:

'If two or more petitions are filed by or against the same person * * * in different courts, EACH OF WHICH HAS JURISDICTION * * * etc.'

which General Order is itself based on Section 32 of the Bankruptcy Act (11 U. S. C. 55):

'In the event petitions are filed by or against the same person * * * in different courts of bankruptcy, EACH OF WHICH HAS JURISDICTION, the case shall, by order of the court first acquiring jurisdiction, be

transferred to and consolidated [43] in the court which can proceed with the same for the greatest convenience of parties in interest.'

It was a matter of uncertainty at the time that the involuntary petition was filed in California in which jurisdiction the administration of the estate finally would be had.

It is true that the California proceeding is not ancillary to that in Oklahoma (Bankruptcy Act, 2, a (20), 69, c, General Order 51) within the meaning of the Bankruptcy Act.

The action here invoked by the California receiver is not in the administration of the bankrupt estate as such. It must be assumed that on the showing made in his petition this court exercised a sound discretion in the appointment of a receiver. Plainly, it was a part of prudence to insure the property and keep it intact. A duty is imposed on every court, having property in its possession, to preserve the same and to control and to compensate its own officers in the performance of their duties with respect to such property.

The motion of Mr. Jackson must be denied, and it is so ordered.

November 15, 1939.

[Endorsed]: Filed Nov. 15, 1939. [44]"

The opinion of the United States Circuit Court of Appeals for the Ninth Circuit, was filed May 10, 1940,

and is reported in 111 Federal Reporter, second series, page 1003. It follows:

OPINION OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

Upon appeal from the District Court of the United States for the Southern District of California, Central Division.

Before: Wilbur, Denman and Mathews, Circuit Judges.

Wilbur, Circuit Judge:

On July 5, 1939, Leonard J. Woodruff filed a voluntary petition in bankruptcy in the United States District Court for the Eastern District of Oklahoma predicating jurisdiction upon the proposition that his principal place of business during the preceding six months was in that district. The order of adjudication was made on the same day and P. M. Jackson, the appellant, was selected as trustee in bankruptcy in such proceeding.

On July 13, 1939, an involuntary petition in bankruptcy was filed against Leonard J. Woodruff in the United States District Court for the Southern District of California praying that he be adjudged a bankrupt and seeking the appointment of a receiver to conserve the assets of the bankrupt within the district. The court appointed E. A. Lynch, the appellee, as receiver in bankruptcy. Jurisdiction was predicated upon the ground that the alleged bankrupt had his domicile within said district for more than six months prior to filing petition and that for more than ten years his principal place of business had been located in said district. The petition was by a single creditor whose claim was for $278,631.71, evidenced by a judgment for that amount. It did not purport to be a petition for an-

cillary administration, although at the time of filing it the creditor knew that the alleged bankrupt had previously been adjudicated a bankrupt by the District Court for the Eastern District of Oklahoma and so informed the judge who appointed the receiver.

As it is not questioned that the receivership was necessary to conserve and protect the assets of the bankrupt within the Southern District of California, it is unnecessary to elaborate the subject further than to say that it involves, among other things, the possession and control of a large stock of merchandise.

In view of the pendency of these proceedings in Oklahoma and in California the trustee in bankruptcy appointed by the District Court for the Eastern District of Oklahoma, purporting to act under order No. 6 of general orders in bankruptcy promulgated January 16, 1939, effective February 13, 1939, invoked the authority of the Oklahoma court to determine whether or not it should make an order directing that all further proceedings be had before it and transferring to that court the bankruptcy proceedings pending before the United States District Court for the Southern District of California. The order applied for was made. A copy of this order was filed with the Clerk of the District Court for the Southern District of California and was brought to the attention of the court by the clerk. The court, by order, declined to make the order transmitting the record and proceedings until it had settled the accounts of the receiver and allowed compensation to him and his attorney. It further ordered that within five days the receiver and his attorneys file their report and petition for compensation. The trustee in bankruptcy appointed in

the proceedings in the Eastern District of Oklahoma moved the court to revoke this order but it refused to do so and confirmed the previous ex parte order. From this order denying the trustee's motion this appeal was taken. In the meantime an appeal to the Circuit Court of Appeals for the Tenth Circuit had been taken from the order of the District Court of Oklahoma assuming jurisdiction over the California proceedings under the provisions of General Order in Bankruptcy No. 6.

It appears from statements made at the argument that the receiver has filed his accounts as required by the order and that the court has ordered the receiver to deliver the property in his possession to the appellant not to be removed from the district until the account is settled and fees paid and that the trustee has agreed to the order subject to the determination of this appeal as to the jurisdiction of the court. The questions presented are therefore not entirely moot.

The appellant now contends that General Order in Bankruptcy No. 6, and the corresponding statute (11 U. S. C. A. §55; Sec. 1, 52 Stat. 851) do not apply to the situation. He contends that upon the adjudication of bankruptcy in the District Court for the Eastern District of Oklahoma it immediately acquired exclusive jurisdiction over the bankruptcy proceedings and that the title to and right to possession of all the property of the bankrupt wherever located vested in him and that no district court of the United States in any other district had jurisdiction to entertain or consider a primary application for an adjudication of bankruptcy filed thereafter. If this were true it would follow that the District Court for the Southern District of California could make no valid order in the premises.

We do not agree with appellant's understanding of the law but think that the District Court for the Southern District of California does have jurisdiction by virtue of the primary petition addressed to it. Under the provisions of the Bankruptcy Act it may and frequently does happen that two or more courts have concurrent jurisdiction over bankruptcy proceedings against the same person. This act (52 Stat. 857, §1; 11 U. S. C. A. §55) provides that when petitions are filed in "different courts of bankruptcy, each of which has jurisdiction", the cases shall, by order of the court first acquiring jurisdiction, be transferred to and consolidated in the court which can proceed with the same for the greater convenience of the parties in interest. The word "jurisdiction" is not always used in the same sense, as this section shows. The phrase "first acquiring jurisdiction" as used therein has been held to refer to the court in which a petition is first filed. *In re Elmira Steel Co.,* 109 F. 456. But clearly, as the word is used in the phrase "courts, each of which has jurisdiction," it has a broader meaning and refers to the jurisdiction conferred by the act upon bankruptcy courts in general, without reference to the order of filing a petition or to priority of adjudication. In that sense jurisdiction was conferred upon the District Court for the Southern District of California as well as upon the court in the Eastern District of Oklahoma. Acting thereunder each could exercise such power as might be necessary to carry out the purpose of the act. (See *Babbitt v. Dutcher,* 216 U. S. 102.)

Until consolidation was ordered by the District Court for the Eastern District of Oklahoma, both of these courts had primary jurisdiction to entertain petitions in bankruptcy, appoint receivers, and do whatever was necessary

to preserve the bankrupt's property. In the exercise of that jurisdiction the District Court for the Southern District of California appointed appellee as receiver, and his duties did not automatically cease upon the decision of the District Court for the Eastern District of Oklahoma to hear both cases. The Supreme Court has gone so far as to hold that where a territorial court, with no jurisdiction in bankruptcy, had appointed a receiver of certain property which had been attached and was in danger of destruction, and subsequently authorized its sale, that sale was valid, although the owner of the property had been adjudicated a bankrupt, without the knowledge of the territorial court, nearly three months before the sale. (*Jones v. Springer,* 226 U. S. 148.) If a court with no jurisdiction in bankruptcy could properly do all that was done by such a court in that case it is obvious that the District Court for the Southern District of California had power to do all that it did in this case when acting upon a petition in bankruptcy, notwithstanding a prior adjudication.

Assuming that, as has been shown, the District Court for the Southern District of California had jurisdiction to appoint the receiver and administer the estate until the District Court for the Eastern District of Oklahoma made its order determining the question of convenience and directing the transfer of the records in pursuance of General Order in Bankruptcy No. 6, the question is whether or not the trial court wrongfully retained jurisdiction over the accounts of the receiver until they should be settled and his compensation and that of his attorney finally determined.

If the question involved merely the settling of the receiver's accounts and fixing his fees and those of his

attorney, we see no persuasive reason why that matter might not have been transferred to the District Court for the Eastern District of Oklahoma. Such a transfer would be analogous to that which occurs when the affairs of a bankrupt, previously in charge of an equity receiver appointed by a state or federal court, are taken over by a bankruptcy court in the exercise of its exclusive jurisdiction. That such a court may provide for compensating those who have taken care of the bankrupt's estate under the order of a court of competent jurisdiction is clear. (*Gross v. Irving Trust Co.*, 289 U. S. 342; *Moore v. Scott*, 55 F. 2d 863.)

But the situation here is complicated by the fact that the District Court for the Southern District of California, acting in pursuance of its power as a federal court of bankruptcy, has taken possession of the property within its district which might have been lost or destroyed but for such action and might yet be lost or destroyed if left for a single day without a legal custodian.

Although the order of adjudication of the bankruptcy of Woodruff and the appointment of the trustee vested in the latter the title and right of possession of the property of the bankrupt wherever situated (*Isaac v. Hobbs Tie & T. Co.*, 282 U. S. 734) the process of the District Court for the Eastern District of Oklahoma, acting under this section, could have no extraterritorial effect. (*Babbitt v. Dutcher, supra; In re J. & M. Schwartz*, 204 F. 326; *Oronoco Iron Co. v. Metzel*, 230 F. 40.)

It follows that in order to secure control of the property of the bankrupt which was in the hands of the receiver appointed by the District Court for the Southern District of California, it was necessary for the trustee to

obtain an order from that court directing its receiver to surrender the property to the trustee. As we construe the statute, such an order would be an exercise of ancillary jurisdiction in bankruptcy (11 U. S. C. A. §11, sub. 20; §2-A, sub. 20 Chandler Act). In exercising that ancillary jurisdiction we think it was proper for the court below to provide for payment to those who had cared for the bankrupt's property under its direction before ordering its surrender to the trustee. (See, 11 U. S. C. A. §11, sub. (20)).[1]

It follows that the court below was right in retaining control of the bankrupt's property until the receiver's accounts were settled and provision made for his fees and those of his attorneys as an incident to the turnover of the property. The temporary retention of the papers was merely incidental to that order and it appears that the papers were shortly thereafter transmitted.

Order affirmed.

(Endorsed:) Opinion. Filed May 10, 1940. Paul P. O'Brien, Clerk.

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[1]11 U. S. C. A. §11, sub. (20) is as follows:

"(20) exercise ancillary jurisdiction over persons or property within their respective territorial limits in aid of a receiver or trustee appointed in any bankrutpcy proceedings pending in any other court of bankruptcy."

The Opinion of the Circuit Court of Appeals for the Ninth Circuit Is In Accord With the Law as Expressed by the Other Circuit Courts of Appeal, Particularly the Third Circuit (Loesser v. Dallas, 102 Fed. 909), the Eighth Circuit (Fidelity Trust Company v. Gaskell, 195 Fed. 865), the ..... Circuit (Kirker v. Owings, 98 Fed. 511), the Second Circuit (In Re Isaacson, 174 Fed. Reporter 406; Butler v. Ellis, 45 Fed. Reporter 2, 951, p. 953).

This Court has expressed itself on the subject in *Babbitt v. Deutcher,* 216 U. S. 101, putting with the approval the opinion of Justice Bradley in the case of *Sherman v. Bingham.*

> "In the courts of the United States this ancillary jurisdiction may be exercised though it is not authorized by any statute. The jurisdiction in such *cases arises out of possession of the property,* and is exclusive of the jurisdiction of all other courts although otherwise the controversy would be cognizable in them. *Murphy v. John Hoffman Co.,* 211 U. S. 562, 569."
>
> *Butler v. Ellis,* 45 Fed. (2d) 951, at p. 953.

> "There the rule is no different, we think, in bankruptcy proceedings where the court of ancillary jurisdiction is proceeding under the bankruptcy statute. The leading case on the subject is Fidelity Trust Company v. Gaskell (C. C. A. 8th), 195 Fed. 865, 871, in which the late Judge Sanborn went into the matter very fully and stated the rule applicable as follows: 'A proceeding in bankruptcy is a proceeding in equity, and a district court sitting in bankruptcy, whether it is exercising its primary or its ancillary jurisdiction,

> is a court of equity. It is an established principle of equity jurisprudence that whenever a court of chancery takes into its legal custody, and thereby withdraws and withholds property from replevin, attachment, or other legal proceedings, it hears and adjudges the claims to the title and to legal and equitable liens upon the property of all parties who intervene in the suit, etc. . . ."
>
> *Butler v. Ellis, supra.*

This case of *Butler v. Ellis, supra,* being a decision in the Circuit Court of Appeals for the Second Circuit, directly decided the following matters:

First, that a district court could seize and had seized property of the bankrupt, which property was within the court's territorial jurisdiction;

Second, that that court had jurisdiction to determine the liens against the property within its jurisdiction, and had jurisdiction to fix the amount of allowance for compensation to its receiver and to the attorneys for its receiver;

Third, that the court could order the sale of sufficient of the property within its territorial jurisdiction to pay such claims, liens, fees and costs of administration.

The Court in its opinion said:

> "It is unthinkable that in authorizing the district courts to exercise ancillary jurisdiction in aid of a receiver or trustee in bankruptcy appointed in another jurisdiction, it was intended that these courts should do no more than seize property designated by the officer of the foreign court, and without hearing those who claim the property or an interest therein, turn it over to be administered in a jurisdiction hundreds of miles removed from the residence of the

claimants. The first duty of the court is to do justice; and it is manifest that when through its receiver it lays its hands on property and thus renders it impossible for any other court to determine the ownership thereof or of the right of property therein, justice requires that it should itself hear and pass upon the claims of those who assert that the property belongs to them and not to the bankrupt.

Butler v. Ellis, supra.

"On the third question, however, we think that the learned judge below was in error in confirming a sale of the property and in allowing fees to the receiver and attorneys, without giving notice to creditors or observing the limitations on allowance prescribed by the Bankruptcy Act. * * * And the case will be remanded to the end that notice may be given to creditors of the sale, and proposed confirmation and the application of receiver, commissioner, and counsel for allowance. The court need not order a resale of the property unless after notice to creditors it shall appear that the amount of the bid is grossly inadequate. * * * In making allowances, the limitation of statute referred to and the requirement of General Order No. 42 should be observed."

Butler v. Ellis, supra.

In the case of *In re Einstein*, 245 Fed. 189, at 194, the Court in its opinion said:

"It seems to me this reduces the question in issue to the proposition: Has this court the ancillary jurisdiction or power to establish and declare the existence of this lien, direct its payment from the proceeds of such sale, and also the legitimate expenses of the receiver, and direct the payment of the balance to the

trustee in Florida? *Or* must this court, having determined that the proceeds of such sale belong to the estate in bankruptcy of Robert Einstein, direct the payment of the funds to the trustee in Florida and relegate the Gurnsey B. Williams Company and the receiver to the court of bankruptcy in Florida? The amendments of 1910 to the bankruptcy law confer ancillary jurisdiction on courts of bankruptcy where property of the bankrupt may be found. *Fidelity Trust Co. v. Gaskell* (109 Fed. 865) (also citing additional authorities). * * * It seems clear that it would be unjust for a court in bankruptcy, having the actual possession of the property with different claimants thereto residing in its jurisdiction, to send the property to some other district, it might be thousands of miles distant, and relegate the parties to that court."

Authority to Fix Compensation of Receiver and Attorney for Receiver.

In the case of *In re Isaacson* (C. C. A. 2d), reported in 174 Federal Reporter at 406, a petition in involuntary bankruptcy was filed in the Southern District of New York, and a receiver was appointed; the receiver took possession of two places of business of the bankrupt; thereafter a petition in bankruptcy against the same bankrupt was filed in another district, and adjudication followed.

An order was made under General Order No. 6, by which the proceedings were ordered transferred to the jurisdiction last in point of time. Petitions were presented to the First District Court for allowances for the receiver and his attorneys, to wit, the receiver first appointed, and for the allowance of the accounts of the receiver first appointed. It was contended there was legal error in the

first court's fixing the amount of allowance and directing payment thereof. The question of jurisdiction was raised, and the opinion in that case reads:

> "We cannot assent to the proposition that the court which appointed the receiver and for which his services were rendered has not jurisdiction to examine into the nature and extent of those services, and to determine what is a proper compensation therefor. Technically, that court has no jurisdiction to order the receivers appointed *by another court* to make disbursements out of the fund in their hands, and in that particular the order of October 27, 1908, is modified; but the bankruptcy court in the Eastern District will undoubtedly give full faith and credit to the determination of the court in the Southern District as to the value of the services rendered by an officer of that court to that court, and will instruct its own receivers accordingly. * * *" (With the modifications above indicated, the order is there affirmed.) (Italics ours.)
>
> *In re Isaacson, supra.*

In *Fidelity Trust Co. v. Gaskell,* 195 Fed. 865, at page 874, the Court says:

> "The suggestion that such a court may not fix and pay the compensation and expenses of its receiver out of the proceeds of the property he seizes and converts into money under its direction, because the amendment of Section 2 of the Bankruptcy Law or the Act of June 25, 1910, provides that notice to creditors shall be given before the compensation of the receiver shall be fixed, loses its force when it is considered that by the same Act notice to creditors of the sale of the property of a bankrupt's estate is also required to be given. (36 Stats. 412, Secs. 9 and 9½, page 841.) And while this question is not here for adjudication

in this case, we are unwilling by silence to intimate any assent to a rule that a court appointing a receiver in the exercise of its ancillary jurisdiction in bankruptcy has not preliminary power to pay the compensation and its legitimate expense out of any funds in its hands belonging to the estate of the bankrupt."

In the case of *Loeser v. Dallas* (C. C. A. 3rd Circuit), 192 Fed. 909, it was held that, as between a district court in Ohio and a district court in the Western District of Pennsylvania, the Court appointing the receiver had jurisdiction to settle the receiver's accounts, and that the receiver was not bound to account to the court of primary jurisdiction providing notice of the hearing of his accounts was given. The Court said:

"The amendment of June 25, 1910, to the bankruptcy law, providing for ancillary proceedings in bankruptcy, simply recognized by statute a practice which courts in bankruptcy in pursuance of principles of equity and comity had theretofore generally exercised. In the nature of things an ancillary receiver must be subject alone to and obey the orders of that court of which he is an officer. So obeying, it follows that to it alone he must account. Any other course would breed confusion in administration and go far toward making the exercise of ancillary jurisdiction impracticable; but if a court in pursuance of comity undertakes to exercise ancillary jurisdiction by administering local assets which it alone has power and jurisdiction to administer, it follows that its hand must be free to administer by its own officer and to exact from him the full measure of duty. Such effective work it can only secure from an officer answerable to it alone. *Kirker v. Owings,* 98 Fed. 511, 39 C. C. A. 132; *Sands v. Neely,* 88 Fed. 133, 31 C. C.

A. 424; *In re Isaacson,* 174 Fed. 406, 98 C. C. A. 614; *Ames v. U. P. Ry. Co.,* 60 Fed. 966. * * * As this petition has subjected the ancillary receiver to the expense of contesting the petition in this court, the court below is authorized to make such proper reimbursing allowance for such expense to the receiver from the funds in his hands as it deems proper. The order of the district court is affirmed with costs, and the record will be remanded with instructions to that court to allow said costs and a reasonable counsel fee to the ancillary receiver's counsel for his services in this court, to be paid out of the balance of the monies appearing by his report to be in the hands of said receiver."

Loeser v. Dallas, supra.

Respecting the district courts and their respective territorial limits, the Circuit Court of Appeals for the 8th Circuit, in the case of *Fidelity Trust Co. v. Gaskell,* said:

"Under it these courts must appoint their own receivers, must guard them against wrongful action and consequent liability, and must direct the course that they must pursue. Conscience, good faith, and reasonable diligence alone must move courts of equity to action. They may not be divested of their judicial functions and made mere catspaws to do the will of private parties or public officers even by legislative action, much less by mere construction. * * * That Act and those decisions are that the district courts sitting in bankruptcy and consequently in equity have ancillary jurisdiction in bankruptcy proceedings pending in other districts."

Id.

"A court exercising ancillary jurisdiction acts independently of the court of primary jurisdiction or of its officers, and for itself. It appoints its own receiver, generally the same person appointed receiver by the court of primary jurisdiction, but in the seizure, management, sale and distribution of the property seized within the territorial limits of its district of which it takes the legal custody, this receiver is and must be governed by its orders exclusively."

Id., page 874.

The District Court for the Southern District of California Properly Exercised Its Jurisdiction Over Property of the Bankrupt Within Its Territorial Limits, Which Property Was Not Scheduled by the Bankrupt in His Voluntary Oklahoma Proceedings.

Under the Bankruptcy Act the bankrupt can be adjudicated in the place where he has *either* his residence, his domicile, or his principal place of business.

"A district court of the United States, sitting as a court of bankruptcy, is a court of limited jurisdiction. Limitations exist as to subject matter; as to territory; as to residence and occupation of the debtor to be adjudicated; * * * and consent cannot confer jurisdiction over subject matter. The express provisions of the statute and necessary implication are controlling."

Nixon v. Michaels, 38 Fed. (2d) 420.

"He was a sojourner merely, and not a resident, of East St. Louis. We look upon this transaction as an imposition upon the jurisdiction of the court. The

Congress did not intend *that one may select any court of bankruptcy which he pleases in these broad United States*, and be enabled, through a pretentious removal to the district of that court, to obtain his discharge from his debts. To allow that to be done would open the door to grave frauds upon creditors, which we are not disposed to countenance." (Italics ours.)

In re Garneau, 11 A. B. R. 679, 127 Fed. 677 (C. C. A., Ill.), cited by *Remington on Bankruptcy*, Vol. 1, p. 71; also citing *In re Sutter*, 46 A. B. R. 267, 270 Fed. 248.

Creditors may interpose jurisdictional questions in a voluntary bankruptcy and after adjudication.

See:

In re San Antonio Land Co., 36 A. B. R. 512, 228 Fed. 984;

In re Guancevi Tunnel Co., 29 A. B. R. 229, 201 Fed. 316 (C. C. A., N. Y.);

In re Waxelman, 3 A. B. R. 395, 98 Fed. 589;

Niagara Contracting Co., 11 A. B. R. 645, 127 Fed. 782;

German v. Franklin, 9 Sup. Ct. Rep. 159, 128 U. S. 52, 32 L. Ed. 519;

Nixon v. Michaels, 38 Fed. (2d) 420, 15 A. B. R. (N. S.) 489 (C. C. A., Mo.).

The alleged bankrupt cannot confer jurisdiction upon a court not having jurisdiction of the subject matter or of the person.

"But assuredly, neither consent nor waiver can confer jurisdiction in the bankruptcy court of one district to adjudge bankrupt a debtor not resident, domiciled

or having his principal place of business therein, although the ascertainment of such jurisdictional fact must be left in the same court for determination and its determination may not be subject to collateral attack."

Remington on Bankruptcy, Vol. 1, p. 72.

The bankruptcy court has jurisdiction to determine whether the debtor belongs to the class subject to bankruptcy in that jurisdiction.

"No one may be adjudged bankrupt upon his own petition or upon the petition of another, by his own consent or contrary thereto, except by the bankruptcy court of the district where he has had either his residence, domicile or principal place of business for the six months, or for the greater portion thereof, preceding the filing of the petition."

Statement from the text of *Remington on Bankruptcy*, Vol. 1, p. 75, and citing:

In re Williams, 9 A. B. R. 736;

In re Mitchell, 33 A. B. R. 463;

In re Elmire Steel Co., 5 A. B. R. 485;

In re Garneau, 11 A. B. R. (C. C. A., Ill.).

"An established domicile is presumed to continue down to the filing of the petition, in the absence of proof to the contrary. These limitations as to residence, domicile and principal place of business are jurisdictional, pertaining to jurisdiction over the subject matter; and they cannot be waived."

Remington on Bankruptcy, Vol. 1, p. 76, citing authorities heretofore quoted.

The District Court for the Southern District of California exercised its jurisdiction over property of the bankrupt within its territorial jurisdiction limits: (1) Because a bankruptcy proceeding purporting to be a primary petition had been filed in its jurisdiction; (2) by the order of Judge James appointing a receiver for the California properties; (3) by an order of Judge McCormick ordering the receiver to examine the bankrupt in Oklahoma in aid of the proceedings in California; (4) by the order of Judge Cosgrave staying the transmittal of the California proceedings records to Oklahoma *only* until the California court should obtain the report and account of its own receiver, to wit, the appellee E. A. Lynch.

The latter delay was necessary to determine what property said receiver had reduced to possession in California, to approve or disapprove the correctness of the receiver's account and expenditures, and to provide for the receiver's compensation rather than send him back two thousand miles to Oklahoma to have his account settled and allowed.

In no other manner could the judges of the California District Court control their own officers, the Receiver E. A. Lynch being only "the long arm of the court" by and through which the court acts.

The Jurisdiction in This Case Is Either Primary or Ancillary. If Primary, the Following Applies:

In June, 1910, Congress amended the Bankruptcy Act so that it read that the district courts

> "are hereby invested within their respective territorial limits as now established or as they may be hereafter changed with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in

bankruptcy proceedings in vacation, in chambers, and during their respective terms, as they or now or may hereafter be held. * * *"

In the case of *Babbitt v. Dutcher*, 216 U. S. 101, Chief Justice Fuller delivered the opinion of the court and quoted with approval the opinion of Justice Bradley in the case of *Sherman v. Bingham* (Supreme Court) as follows:

" 'Their jurisdiction is confined to their respective districts, it is true, but it extends to all matters and proceedings in bankruptcy without limitation. When the act says that they shall have jurisdiction in their respective districts, it means that the jurisdiction is exercised in their respective districts, each court within its own district may exercise the powers conferred; but those powers extend to all matters of bankruptcy without limitation. There are, it is true, limitations elsewhere in the act, but they affect only the matters to which they relate. * * *'

"But the exclusion of other district courts from jurisdiction of these proceedings does not prevent them from exercising jurisdiction in matters growing out of or connected with that identical bankruptcy so far as it does not trench upon or conflict with the jurisdiction of the court in which the case is pending. * * * That the courts of such other districts may exercise jurisdiction, in such cases, would seem to be the necessary result of the general jurisdiction conferred upon them, and is in harmony with the scope and design of the act."

Babbitt v. Dutcher, supra.

If the Jurisdiction in This Case Is Ancillary, the Following Applies:

The amendment in 1910 above referred to continued, under section 2, subdivision 20, that the courts are invested within their respective territorial limits to

> "exercise ancillary jurisdiction over persons or property within their respective territorial limits in aid of a receiver or trustee appointed in any bankruptcy proceedings pending in any other court of bankruptcy."
>
> *U. S. Compiled Statutes* 1901, p. 3420, as amended by Act June 25, 1910; *U. S. Compiled Statutes* Supp. 1911, p. 1491.

A District Court May Not Exercise Its Power Outside Its Respective Territorial Limits.

In the case of *Fidelity Trust v. Gaskell,* 195 Fed. 865, at page 871, the Court said:

> "Moreover, it seems to be settled by the decisions in Babbitt v. Dutcher, and other cases, that the limitation of section 2 of the Bankruptcy Act of the jurisdiction granted to the district courts in bankruptcy to 'other respective territorial limits' restricts the exercise of the power of a district court in which a petition in bankruptcy is filed to its own district, and that it may not enforce its process or its order for the delivery of property without the territorial limits of its district."

Citing:

Lathrop v. Drake, 91 U. S. 516, 517, 23 L. Ed. 414;

Babbitt v. Dutcher, 216 U. S. 102, 110, 30 Sup. Ct. 372, 54 L. Ed. 402, 17 Ann. Cas. 969;

Staunton v. Wooden, 179 Fed. 61, 64, 102 C. C. A. 355;

In re Peiser (D. C.), 115 Fed. 199, 200;

In re Sutter Bros. (D. C.), 131 Fed. 654;

In re Benedict (D. C.), 140 Fed. 55;

In re Robinson (D. C.), 179 Fed. 724.

"It is therefore no longer true that one court, the court making the adjudication in bankruptcy, takes exclusive jurisdiction and alone collects and determines the titles to and liens upon the property wherever situated claimed as part of the estate of the bankrupt."

Fidelity Trust v. Gaskell, supra.

"A proceeding in bankruptcy is a proceeding in equity, and a district court sitting in bankruptcy, whether it is exercising its primary or its ancillary jurisdiction, is a court of equity. It is an established principle of equity jurisprudence that whenever a court of chancery takes into its legal custody, and thereby withdraws and withholds property from replevin, attachment, or other legal proceedings, it hears and adjudges the claims to the title and the legal and equitable liens upon that property of all parties who intervene in the suit or proceedings before it, in their own behalf, and submit their claims to its adjudication."

Fidelity Trust v. Gaskell, supra.

The *Chandler Act*, effective September 22, 1938, definitely determined the controversy, if any, that existed prior to that date concerning the duties and powers of ancillary jurisdiction. Prior to the enactment of this act, there was a difference of opinion among the district and

the circuit courts as to the right of the ancillary courts to sell assets, fix fees, and pay expenses of the ancillary estate; and prior to this act the weight of respectable authority was that the ancillary court *did have* such authority. The Chandler Act definitely settles the controversy and fixes upon the ancillary court the *duty* and the *right so to do.*

Section 2a, subdivision (20), reads:

> "Exercise ancillary jurisdiction over persons or property within their respective territorial limits in aid of a receiver or trustee appointed in any bankruptcy proceedings pending in any other court of bankruptcy: Provided, However, That the jurisdiction of the ancillary court over a bankrupt's property which it takes into custody shall not extend beyond preserving such property and, where necessary, conducting the business of the bankrupt, and reducing the property to money, paying therefrom such liens as the court shall find valid and the expenses of ancillary administration, and transmitting the property or its proceeds to the court of primary jurisdiction; and * * *"

In *Elkins, Petitioner in the Matter of Madison Steele Co., Bankrupt,* 216 U. S. 115 (C. C. A., 2d Circuit), the Court ends its decision with the following answer to its own question:

> "Have the respective district courts of the United States sitting in bankruptcy ancillary jurisdiction to make orders and issue process in aid of proceedings pending and being administered in the district court

of another district? On the authority of Babbitt v. Dutcher, just decided (216 U. S. 102, *ante* 402, 30 Supreme Court Reps. 372), we answer both questions in the affirmative and it will be so certified."

That decision held that a district court under its primary jurisdiction can do all, each and every act under the Bankruptcy Act with respect to persons and property of the bankrupt within its jurisdiction, even though another bankruptcy of such person is pending in another district.

No Duplication or Multiplication of Expenses in Bankruptcy Cases Is Permitted or Encouraged by the Opinion of the Circuit Court of Appeals for the Ninth Circuit.

In the instant case, as appears from the record, the California Court appointed a Receiver to preserve property within its geographical territorial jurisdiction, which property had *not* been scheduled by the same bankrupt in his Oklahoma proceedings. The justification in fact for this appears affirmatively in the record and is apparently conceded by the petitioner as in his opening statement in his petition for certiorari herein before this Court, he says:

> "As it is not questioned that the receivership was necessary to conserve and protect the assets of the bankrupt within the Southern District of California, it is unnecessary to elaborate, etc., etc. * * *."
> (Page 4, Petition for Writ of Certiorari herein.)

There Was No Final Judgment in the Oklahoma District Court Which Was Disregarded.

According to the petitioner both the District Court in the Eastern District of Oklahoma and the District Court for the Southern District of California had equal rights to entertain the bankruptcy proceedings of Woodruff, Oklahoma on principal place of business, California on residence and domicile. Until the Oklahoma Court made its order in October, 1939, under General Order 6, which is based on the assumption as provided by law that if two or more courts exist who have jurisdiction, then either of these courts can preserve the property of the bankrupt within its geographical and territorial jurisdiction, and so did.

The California Court protected the assets in California by receiver in July, 1939. The Oklahoma Court waited until after the election of the Trustee. When the Oklahoma Court made its order under General Order 6 in October, 1939, ordering the matters consolidated, the California Court did not attempt thereafter to proceed with the administration of the estate. All it did was to require of its own officer, its own long arm, its own receiver, an accounting as to what property he had taken, what expenses he had incurred; otherwise, the Court could not have properly ordered the Receiver to deliver the property to the Oklahoma Court.

The Opinion of the United States Circuit Court for the Ninth Circuit Does Not Destroy the Requirements of General Order 51.

The petitioner cites *Gross v. Irving Trust Company*, 289 U. S. 342, in support of his statement that the Circuit Court's opinion in the instant case destroy the requirements of General Order 51. The *Gross* case referred to the question of exclusive jurisdiction as between the District Courts of the United States and State Courts, and does not apply to exclusive jurisdiction as between the Federal District Courts of the United States.

No matter is presented which justifies the issuance of the writ petitioned for here.

Respectfully submitted,

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